

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

ANTHONY TYRONE BAILEY,)	
Petitioner,)	
)	
vs.)	
)	Case No. 1:14-cv-01076-LJM-TAB
UNITED STATES OF AMERICA,)	
)	
Respondent.)	

**Entry Discussing Motion for Relief Pursuant
to 28 U.S.C. § 2255 and Denying Certificate of Appealability**

I. The ' 2255 Motion

For the reasons explained in this Entry, the motion of Anthony Tyrone Bailey for relief pursuant to 28 U.S.C. § 2255 must be denied and the action dismissed for lack of jurisdiction. In addition, the Court finds that a certificate of appealability should not issue.

Bailey's motion to vacate originally filed on November 14, 2013, in No IP00-C-027-M/F challenges his conviction in No. IP97-CR-118-M/F-03. The motion is before the Court for its preliminary review pursuant to Rule 4 of the *Rules Governing Section 2255 Proceedings in the United States District Courts*.

A jury convicted Bailey of two counts of car jacking, one count of armed bank robbery, and three firearms offenses in No. IP97-CR-118-M/F-03. Judgment was entered on May 11, 1998. Bailey appealed his conviction and the Seventh Circuit affirmed. *United States v. Jones*, 188 F.3d 773 (7th Cir. 1999).

On January 7, 2000, Bailey filed a motion to vacate, set aside, or correct sentence under 28 U.S.C. § 2255. asserting the ineffective assistance of counsel and lack of jurisdiction. This Court

denied the § 2255 motion on the merits on June 6, 2000, and denied a certificate of appealability. *Bailey v. United States*, No. 1:00-cv-0027-LJM-KPF (S.D. Ind. June 6, 2000).

On April 21, 2004, Bailey filed another § 2255 motion. That action was dismissed for lack of subject matter jurisdiction because it was a successive collateral attack on his conviction. *Bailey v. United States*, No. 1:04-cv-0712-LJM-WTL (S.D. Ind. April 28, 2004).

On June 26, 2014, Bailey filed this, yet another successive § 2255 motion. “Under the Anti-Terrorism and Effective Death Penalty Act (“AEDPA”), prisoners are entitled to a *single* unencumbered opportunity to pursue collateral review.” *Vitrano v. United States*, 643 F.3d 229, 233 (7th Cir. 2011) (emphasis added). The AEDPA does not contemplate piecemeal or successive filings of post-judgment collateral challenges.

When there has already been a decision on the merits in a federal habeas action, to obtain another round of federal collateral review a petitioner requires permission from the Court of Appeals under 28 U.S.C. § 2244(b). *See Potts v. United States*, 210 F.3d 770 (7th Cir. 2000). This statute, § 2244(b)(3), “creates a ‘gatekeeping’ mechanism for the consideration of second or successive [habeas] applications in the district court.” *Felker v. Turpin*, 518 U.S. 651, 657 (1996). This statute “is an allocation of subject matter jurisdiction to the court of appeals.” *Nunez v. United States*, 96 F.3d 990, 991 (7th Cir. 1996). “A district court *must* dismiss a second or successive petition, without awaiting any response from the government, unless the court of appeals has given approval for its filing.” *Id.*

With a prior § 2255 motion having been adjudicated on the merits, and in the absence of authorization for the present filing from the Court of Appeals, this action must now be summarily dismissed for lack of jurisdiction. Judgment consistent with this Entry shall now issue.


This Entry and the accompanying Judgment shall also be entered on the docket in the underlying criminal action, No. IP97-CR-118-M/F-03.

II. Certificate of Appealability

Pursuant to Federal Rule of Appellate Procedure 22(b), Rule 11(a) of the *Rules Governing § 2254 Proceedings*, and 28 U.S.C. §2253(c), the Court finds that Bailey has failed to show that reasonable jurists would find it “debatable whether [this Court] was correct in its procedural ruling.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). The Court therefore denies a certificate of appealability.

IT IS SO ORDERED.

Date: 08/01/2014


LARRY J. MCKINNEY, JUDGE
United States District Court
Southern District of Indiana

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